

Introduced by Senator Correa

February 17, 2011

An act to amend Sections 6600, 6601, and 6608 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 492, as introduced, Correa. Sexually violent predators: civil commitment.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility, as specified. Proposition 83 of the November 7, 2006, statewide general election, made various changes to the sexually violent predator civil commitment process. Proposition 83 permits the Legislature to amend its provisions, either by a $\frac{2}{3}$ vote of the membership of each house, or by majority vote of the membership of each house if the amendments expand the scope of the application of the provisions of the proposition or increase the punishments or penalties provided in the proposition.

Existing law requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) to refer a person who is in custody under that department's jurisdiction, who is serving a determinate sentence or whose parole has been revoked, for evaluation by the State Department of Mental Health when he or she determines that the person may be a sexually violent predator. Existing law requires that this referral be made at least 6 months before the prisoner's release date from prison.

This bill would require the Secretary of the Department of Corrections and Rehabilitation instead to refer to the State Department of Mental Health (DMH) for assessment any person in the custody of the CDCR,

including the Division of Juvenile Facilities and persons on parole or for whom a warrant of arrest is outstanding, who has committed a sexually violent offense, as defined. The bill would also require the Director of Mental Health to identify and evaluate individuals who are in custody under the jurisdiction of the DMH and who have convictions for sexually violent offenses at least 6 months prior to their release. By increasing the responsibilities of local officials, this bill would impose a state-mandated local program.

Existing law establishes a screening process for the CDCR and the Board of Parole Hearings to determine whether a person has committed a sexually violent offense, and to determine if the person is likely to be a sexually violent predator prior to referral to the DMH for a full evaluation.

This bill would, instead, require the agency with jurisdiction over the confined person to determine whether that person has committed a sexually violent offense and to give notice to the designated county attorney, as provided. The bill would require the DMH to request the designated county attorney determine whether any of the sexually violent offenses are predatory, as defined, and, if the offenses are determined to be predatory, to complete a full evaluation, as specified. The bill would also set forth additional processes for information exchange between the designated county attorney and the DMH and its evaluators. By giving county attorneys additional duties, this bill would impose a state-mandated local program.

Under existing law, persons to be evaluated for civil commitment are evaluated by 2 independent professionals. If the evaluators agree, then a petition for civil commitment may be filed. If the evaluators do not agree, but one evaluator thinks that the person is eligible for commitment, then 2 new evaluations are arranged and a petition may not be filed unless both evaluators agree that the person meets the criteria.

This bill would require, instead, that the reports of the 2 independent professionals be forwarded to the designated county attorney and would remove the requirement of evaluator agreement for the filing of the petition. The bill would require the designated county attorney to review the evaluations and, if he or she determines that the evaluation was based on omitted material information, to request that the DMH provide the evaluators with the information needed to determine if the conclusion of the report would be changed. The bill would require the DMH to comply with this request within a specified time period.

Existing law provides for a procedure for petition for conditional release from civil commitment for a person who has been determined to be a sexually violent predator, including a court hearing.

This bill would add requirements to this hearing process, including the right to be present, the right to a jury trial, the right of victims to testify, a requirement that the court or jury review all prior findings and orders in the case as part of the evidence, and a burden of proof on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6600 of the Welfare and Institutions Code
2 is amended to read:
3 6600. As used in this article, the following terms have the
4 following meanings:
5 (a) (1) "Sexually violent predator" means a person who has
6 been convicted of a sexually violent offense against one or more
7 victims and who has a diagnosed mental disorder that makes the
8 person a danger to the health and safety of others in that it is likely
9 that he or she will engage in sexually violent criminal behavior.
10 (2) For purposes of this subdivision any of the following shall
11 be considered a conviction for a sexually violent offense:
12 (A) A prior or current conviction that resulted in a determinate
13 prison sentence for an offense described in subdivision (b).
14 (B) A conviction for an offense described in subdivision (b)
15 that was committed prior to July 1, 1977, and that resulted in an
16 indeterminate prison sentence.

1 (C) A prior conviction in another jurisdiction for an offense that
2 includes all of the elements of an offense described in subdivision
3 (b).

4 (D) A conviction for an offense under a predecessor statute that
5 includes all of the elements of an offense described in subdivision
6 (b).

7 (E) A prior conviction for which the inmate received a grant of
8 probation for an offense described in subdivision (b).

9 (F) A prior finding of not guilty by reason of insanity for an
10 offense described in subdivision (b).

11 (G) A conviction resulting in a finding that the person was a
12 mentally disordered sex offender.

13 (H) A prior conviction for an offense described in subdivision
14 (b) for which the person was committed to the ~~Department of the~~
15 ~~Youth Authority~~ *Division of Juvenile Facilities* pursuant to Section
16 1731.5.

17 (I) A prior conviction for an offense described in subdivision
18 (b) that resulted in an indeterminate prison sentence.

19 (3) Conviction of one or more of the crimes enumerated in this
20 section shall constitute evidence that may support a court or jury
21 determination that a person is a sexually violent predator, but shall
22 not be the sole basis for the determination. The existence of any
23 prior convictions may be shown with documentary evidence. The
24 details underlying the commission of an offense that led to a prior
25 conviction, including a predatory relationship with the victim, may
26 be shown by documentary evidence, including, but not limited to,
27 preliminary hearing transcripts, trial transcripts, probation and
28 sentencing reports, and evaluations by the State Department of
29 Mental Health. Jurors shall be admonished that they may not find
30 a person a sexually violent predator based on prior offenses absent
31 relevant evidence of a currently diagnosed mental disorder that
32 makes the person a danger to the health and safety of others in that
33 it is likely that he or she will engage in sexually violent criminal
34 behavior.

35 (4) The provisions of this section shall apply to any person
36 against whom proceedings were initiated for commitment as a
37 sexually violent predator on or after January 1, 1996.

38 (b) “Sexually violent offense” means the following acts when
39 committed by force, violence, duress, menace, fear of immediate
40 and unlawful bodily injury on the victim or another person, or

1 threatening to retaliate in the future against the victim or any other
2 person, and that are committed on, before, or after the effective
3 date of this article and result in a conviction or a finding of not
4 guilty by reason of insanity, as defined in subdivision (a): a felony
5 violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5,
6 or 289 of the Penal Code, or any felony violation of Section 207,
7 209, or 220 of the Penal Code, committed with the intent to commit
8 a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of
9 the Penal Code.

10 (c) “Diagnosed mental disorder” includes a congenital or
11 acquired condition affecting the emotional or volitional capacity
12 that predisposes the person to the commission of criminal sexual
13 acts in a degree constituting the person a menace to the health and
14 safety of others.

15 (d) “Danger to the health and safety of others” does not require
16 proof of a recent overt act while the offender is in custody.

17 (e) “Predatory” means an act is directed toward a stranger, a
18 person of casual acquaintance with whom no substantial
19 relationship exists, or an individual with whom a relationship has
20 been established or promoted for the primary purpose of
21 victimization. *“Predatory” also includes acts with multiple victims*
22 *regardless of the relationship between the perpetrator and any*
23 *victim, and regardless of whether the acts were committed on the*
24 *same or different occasions.*

25 (f) “Recent overt act” means any criminal act that manifests a
26 likelihood that the actor may engage in sexually violent predatory
27 criminal behavior.

28 (g) Notwithstanding any other provision of law and for purposes
29 of this section, a prior juvenile adjudication of a sexually violent
30 offense may constitute a prior conviction for which the person
31 received a determinate term if all of the following apply:

32 (1) The juvenile was 16 years of age or older at the time he or
33 she committed the prior offense.

34 (2) The prior offense is a sexually violent offense as specified
35 in subdivision (b).

36 (3) The juvenile was adjudged a ward of the juvenile court
37 within the meaning of Section 602 because of the person’s
38 commission of the offense giving rise to the juvenile court
39 adjudication.

(4) The juvenile was committed to the ~~Department of the Youth Authority~~ *Division of Juvenile Facilities* for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 2. Section 6601 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 710 of the Statutes of 2010, is amended to read:

6601. (a) (1) Whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation *or the Division of Juvenile Facilities*, and who ~~is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator~~ *has committed a sexually violent offense as defined in subdivision (a) or (b) of Section 6600*, the secretary shall, at least six months prior to that individual's scheduled date for release from prison *or another facility*, refer the person *to the State Department of Mental Health* for evaluation in accordance with this section. However, if the ~~inmate~~ *individual* was received by the department with less than nine months of his or her sentence to serve, or if the ~~inmate's~~ *individual's* release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the ~~inmate's~~ *individual's* scheduled release date. *The Director of Mental Health shall also identify all individuals in custody under the jurisdiction of the Department of Mental Health who have convictions for sexually violent offenses as defined in subdivisions (a) and (b) of Section 6600, and, at least six months prior to their release, evaluate these individuals in accordance with this section.*

(2) A petition may be filed under this section if the individual was in custody ~~pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, for any criminal matter or civil commitment~~ at the time the petition is filed. A petition shall not be dismissed on the basis of a later

1 judicial or administrative determination that the individual's
2 custody was unlawful, if the unlawful custody was the result of a
3 good faith mistake of fact or law. *For purposes of this paragraph,*
4 *a person who is on parole, or for whom a warrant of arrest is*
5 *outstanding, shall be deemed to be in the custody of the Department*
6 *of Corrections and Rehabilitation.* This paragraph shall apply to
7 any petition filed on or after January 1, 1996.

8 ~~(b) The person shall be screened by the Department of~~
9 ~~Corrections and Rehabilitation and the Board of Parole Hearings~~
10 ~~based on whether the person has committed a sexually violent~~
11 ~~predatory offense and on a review of the person's social, criminal,~~
12 ~~and institutional history. This screening shall be conducted in~~
13 ~~accordance with a structured screening instrument developed and~~
14 ~~updated by the State Department of Mental Health in consultation~~
15 ~~with the Department of Corrections and Rehabilitation. If as a~~
16 ~~result of this screening it is determined that the person is likely to~~
17 ~~be a sexually violent predator, the Department of Corrections and~~
18 ~~Rehabilitation shall refer the person to the State Department of~~
19 ~~Mental Health for a full evaluation of whether the person meets~~
20 ~~the criteria in Section 6600.~~

21 *(b) When the agency with jurisdiction over the confined person*
22 *as set forth in subdivision (a) determines that an individual in its*
23 *custody has committed a sexually violent offense, as defined in*
24 *subdivisions (a) and (b) of Section 6600, the department shall give*
25 *notice to the attorney designated for the county pursuant to*
26 *subdivision (i) and all agencies subject to notification under*
27 *Section 3058.6 of the Penal Code, of the result of the determination.*
28 *The agency with jurisdiction over the confined person shall*
29 *promptly refer the confined person to the State Department of*
30 *Mental Health. The State Department of Mental Health shall*
31 *immediately notify the county attorney of the referral and request*
32 *that the county attorney determine whether qualifying sexually*
33 *violent offenses are predatory for purposes of this article. Upon*
34 *request by the State Department of Mental Health, the county*
35 *attorney shall determine whether prior sexually violent offenses*
36 *committed by the individual are predatory and immediately notify*
37 *the State Department of Mental Health of the result. If a county*
38 *attorney determines that an individual's prior convictions are*
39 *predatory sexually violent offenses, the State Department of Mental*
40 *Health shall conduct a full evaluation, which includes two complete*

1 *evaluations pursuant to subdivisions (c) and (d), to determine if*
2 *the individual has a diagnosed mental disorder that makes the*
3 *person a danger to the health and safety of others in that it is likely*
4 *that he or she will engage in sexually violent criminal behavior.*

5 (c) The State Department of Mental Health shall evaluate the
6 person in accordance with a standardized assessment protocol,
7 developed and updated by the State Department of Mental Health,
8 to determine whether the person is a sexually violent predator as
9 defined in this article. The standardized assessment protocol shall
10 require assessment of diagnosable mental disorders, as well as
11 various factors known to be associated with the risk of reoffense
12 among sex offenders. Risk factors to be considered shall include
13 criminal and psychosexual history, type, degree, and duration of
14 sexual deviance, and severity of mental disorder. *The State*
15 *Department of Mental Health shall request any information in the*
16 *possession of the county attorney to assist in providing the*
17 *evaluators with all necessary information. The State Department*
18 *of Mental Health shall, upon request, immediately provide the*
19 *prosecuting agencies in subdivision (b) the status of the case, the*
20 *information being relied upon by the evaluators, the names of the*
21 *evaluators and contact information, and the reports written by the*
22 *evaluators whether the reports are positive or negative. The*
23 *evaluation reports shall be forwarded to the county attorney within*
24 *45 days from the date that the county attorney notifies the State*
25 *Department of Mental Health that an individual's sexually violent*
26 *offense is predatory.*

27 (d) Pursuant to subdivision (c), the person shall be evaluated
28 by two practicing psychiatrists or psychologists, or one practicing
29 psychiatrist and one practicing psychologist, designated by the
30 Director of Mental Health. ~~If both evaluators concur that the person~~
31 ~~has a diagnosed mental disorder so that he or she is likely to engage~~
32 ~~in acts of sexual violence without appropriate treatment and~~
33 ~~custody, the Director of Mental Health shall forward a request for~~
34 ~~a petition for commitment under Section 6602 to the county~~
35 ~~designated in subdivision (i).~~ Copies of the evaluation reports and
36 any other supporting documents shall be made available to the
37 attorney designated by the county pursuant to subdivision (i) who
38 may file a petition for commitment. *The State Department of*
39 *Mental Health shall establish an appropriate payment schedule*
40 *for professional services of sexually violent predator evaluators*

1 *with equal payment to each evaluator for similar services.*
 2 *Payments shall not be based on whether the evaluation is positive*
 3 *or negative. Sufficient payment shall be made for court and*
 4 *preparation time.*

5 ~~(e) If one of the professionals performing the evaluation pursuant~~
 6 ~~to subdivision (d) does not concur that the person meets the criteria~~
 7 ~~specified in subdivision (d), but the other professional concludes~~
 8 ~~that the person meets those criteria, the Director of Mental Health~~
 9 ~~shall arrange for further examination of the person by two~~
 10 ~~independent professionals selected in accordance with subdivision~~
 11 ~~(g).~~

12 *(e) Upon completion of evaluations, the State Department of*
 13 *Mental Health shall forward the full copies of the evaluation*
 14 *reports to the attorney designated by the county pursuant to*
 15 *subdivision (i). The designated attorney shall decide whether or*
 16 *not there is sufficient admissible evidence to file a petition pursuant*
 17 *to subdivision (i).*

18 ~~(f) If an examination by independent professionals pursuant to~~
 19 ~~subdivision (e) is conducted, a petition to request commitment~~
 20 ~~under this article shall only be filed if both independent~~
 21 ~~professionals who evaluate the person pursuant to subdivision (e)~~
 22 ~~concur that the person meets the criteria for commitment specified~~
 23 ~~in subdivision (d). The professionals selected to evaluate the person~~
 24 ~~pursuant to subdivision (g) shall inform the person that the purpose~~
 25 ~~of their examination is not treatment but to determine if the person~~
 26 ~~meets certain criteria to be involuntarily committed pursuant to~~
 27 ~~this article. It is not required that the person appreciate or~~
 28 ~~understand that information. Information provided for these~~
 29 ~~evaluations shall be available for review by both the individual,~~
 30 ~~his or her counsel, and the attorney designated by the county~~
 31 ~~pursuant to subdivision (i).~~

32 ~~(g) Any~~ *An independent professional who is designated by the*
 33 *Secretary of the Department of Corrections and Rehabilitation or*
 34 *the Director of Mental Health for purposes of this section shall not*
 35 *be a state government employee, shall have at least five years of*
 36 *experience in the diagnosis and treatment of mental disorders, and*
 37 *shall include psychiatrists and licensed psychologists who have a*
 38 *doctoral degree in psychology. The requirements set forth in this*
 39 *section also shall apply to any professionals appointed by the court*

1 to evaluate the person for purposes of any other proceedings under
2 this article.

3 ~~(h) If the State Department of Mental Health determines that~~
4 ~~the person is a sexually violent predator as defined in this article,~~
5 ~~the Director of Mental Health shall forward a request for a petition~~
6 ~~to be filed for commitment under this article to the county~~
7 ~~designated in subdivision (i). Copies of the evaluation reports and~~
8 ~~any other supporting documents shall be made available to the~~
9 ~~attorney designated by the county pursuant to subdivision (i) who~~
10 ~~may file a petition for commitment in the superior court.~~

11 *(h) If the attorney designated by the county pursuant to*
12 *subdivision (i) determines that an evaluation was based on*
13 *information from which material information was omitted, he or*
14 *she may request that the State Department of Mental Health*
15 *provide the additional information to the evaluators to determine*
16 *if the conclusion of the evaluation would be changed. If so, new*
17 *evaluation reports shall be prepared. The State Department of*
18 *Mental Health shall allow 30 days after forwarding the evaluation*
19 *reports to the attorney designated in subdivision (i) for input on*
20 *either the facts or methodology of the evaluation reports. If such*
21 *input is received, the State Department of Mental Health shall*
22 *have 15 days to forward this information to the evaluators to*
23 *determine how it will affect their evaluation and conclusions.*

24 ~~(i) If the county's designated counsel concurs with the~~
25 ~~recommendation determines that sufficient evidence exists for a~~
26 ~~finding that an individual is a sexually violent predator, a petition~~
27 ~~for commitment shall be filed in the superior court of the county~~
28 ~~in which the person was convicted of the offense for which he or~~
29 ~~she was committed to the jurisdiction of the Department of~~
30 ~~Corrections and Rehabilitation or the county originating the~~
31 ~~commitment for individuals under the jurisdiction of the State~~
32 ~~Department of Mental Health. The petition shall be filed, and the~~
33 ~~proceedings shall be handled, by either the district attorney or the~~
34 ~~county counsel of that county. The county board of supervisors~~
35 ~~shall designate either the district attorney or the county counsel to~~
36 ~~assume responsibility for proceedings under this article.~~

37 (j) The time limits set forth in this section shall not apply during
38 the first year that this article is operative.

39 (k) If the person is otherwise subject to parole, a finding or
40 placement made pursuant to this article shall toll the term of parole

1 pursuant to Article 1 (commencing with Section 3000) of Chapter
2 8 of Title 1 of Part 3 of the Penal Code.

3 (l) Pursuant to subdivision (d), the attorney designated by the
4 county pursuant to subdivision (i) shall notify the State Department
5 of Mental Health of its decision regarding the filing of a petition
6 for commitment within 15 days of making that decision.

7 (m) This section shall become operative on the date that the
8 director executes a declaration, which shall be provided to the
9 fiscal and policy committees of the Legislature, including the
10 Chairperson of the Joint Legislative Budget Committee, and the
11 Department of Finance, specifying that sufficient qualified state
12 employees have been hired to conduct the evaluations required
13 pursuant to subdivision (d), or January 1, 2012, whichever occurs
14 first.

15 (n) *The attorney designated by the county pursuant to*
16 *subdivision (i) shall have access, upon request and without cost,*
17 *to all records held by any state or local agency if the records*
18 *contain information regarding an individual who is being evaluated*
19 *for eligibility as a sexually violent predator or for whom a case*
20 *has been filed or completed. County-designated counsel may*
21 *monitor the progress with the State Department of Mental Health*
22 *of individuals committed pursuant to this article during the period*
23 *of their commitment and shall have full access to all institutional*
24 *records for these individuals. No liability of any type shall attach*
25 *to an individual or institution that provides information upon*
26 *request of the county designated attorney nor shall any liability*
27 *attach to the requesting individual or agency if the information is*
28 *requested in connection with the evaluation, presentation, or*
29 *continued monitoring of a person civilly committed pursuant to*
30 *this article.*

31 SEC. 3. Section 6608 of the Welfare and Institutions Code is
32 amended to read:

33 6608. (a) Nothing in this article shall prohibit the person who
34 has been committed as a sexually violent predator from petitioning
35 the court for conditional release or an unconditional discharge
36 without the recommendation or concurrence of the Director of
37 Mental Health. If a person has previously filed a petition for
38 conditional release without the concurrence of the director and the
39 court determined, either upon review of the petition or following
40 a hearing, that the petition was frivolous or that the committed

1 person's condition had not so changed that he or she would not be
2 a danger to others in that it is not likely that he or she will engage
3 in sexually violent criminal behavior if placed under supervision
4 and treatment in the community, then the court shall deny the
5 subsequent petition unless it contains facts upon which a court
6 could find that the condition of the committed person had so
7 changed that a hearing was warranted. Upon receipt of a first or
8 subsequent petition from a committed person without the
9 concurrence of the director, the court shall endeavor whenever
10 possible to review the petition and determine if it is based upon
11 frivolous grounds and, if so, shall deny the petition without a
12 hearing. The person petitioning for conditional release and
13 unconditional discharge under this subdivision shall be entitled to
14 assistance of counsel. The person petitioning for conditional release
15 or unconditional discharge shall serve a copy of the petition on
16 the State Department of Mental Health at the time the petition is
17 filed with the court.

18 (b) The court shall give notice of the hearing date to the attorney
19 designated in subdivision (i) of Section 6601, the retained or
20 appointed attorney for the committed person, and the Director of
21 Mental Health at least 30 court days before the hearing date.

22 (c) No hearing upon the petition shall be held until the person
23 who is committed has been under commitment for confinement
24 and care in a facility designated by the Director of Mental Health
25 for not less than one year from the date of the order of commitment.

26 (d) The court shall hold a hearing to determine whether the
27 person committed would be a danger to the health and safety of
28 others in that it is likely that he or she will engage in sexually
29 violent criminal behavior due to his or her diagnosed mental
30 disorder if under supervision and treatment in the community. *All*
31 *rights described in subdivision (d) of Section 6605 shall apply to*
32 *this hearing.* If the court or jury at the hearing determines that the
33 committed person would not be a danger to others due to his or
34 her diagnosed mental disorder while under supervision and
35 treatment in the community, the court shall order the committed
36 person placed with an appropriate forensic conditional release
37 program operated by the state for one year. A substantial portion
38 of the state-operated forensic conditional release program shall
39 include outpatient supervision and treatment. The court shall retain
40 jurisdiction of the person throughout the course of the program.

At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health *and the petitioner* of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 30 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court *or jury* rules against the committed person at the trial for unconditional release from commitment, the court *or jury* may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court *or jury* denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence. *The court or jury shall review all prior findings and orders in the case*

1 *as part of the evidence in the trial held pursuant to this section.*
2 *Victims, as defined in subdivision (e) of Section 28 of Article I of*
3 *the California Constitution, may present relevant evidence at this*
4 *proceeding.*

5 (j) If the petition for conditional release is not made by the
6 director of the treatment facility to which the person is committed,
7 no action on the petition shall be taken by the court without first
8 obtaining the written recommendation of the director of the
9 treatment facility.

10 (k) Time spent in a conditional release program pursuant to this
11 section shall not count toward the term of commitment under this
12 article unless the person is confined in a locked facility by the
13 conditional release program, in which case the time spent in a
14 locked facility shall count toward the term of commitment.

15 SEC. 4. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.